

*** NOT FOR PUBLICATION ***

NO. 26043

IN THE SUPREME COURT OF THE STATE OF HAWAII

E. DANIEL LOTENSCHTEIN,
Plaintiff/Counterclaim Defendant-Appellant

vs.

STOEBNER HOLDINGS, INC., dba HONDA WINDWARD,
Defendant/Counterclaim Plaintiff-Appellee

and

JOHN DOES 1-10, JANE DOES 1-10, DOE CORPORATION 1-10, DOE
GOVERNMENTAL ENTITIES 1-10, DOE ENTITIES 1-10, Defendants

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(CIV. NO. 1RC02-2920)

ORDER DISMISSING APPEAL

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Upon review of the record, it appears that the plaintiff's claims in Civil No. 1RC02-2920 were finally disposed by the August 2, 2002 judgment entering judgment on the complaint and awarding attorney's fees and costs. The August 2, 2002 judgment was appealable upon final disposition of the defendant's counterclaim. The counterclaim was finally disposed by the June 16, 2003 stipulation for dismissal that effectively dismissed the counterclaim "without order of the court" pursuant to DCRCP 41(a)(1)(ii) and (c). The filing of the June 16, 2003 stipulation for dismissal ended the district court litigation by fully deciding the rights and liabilities of all parties, leaving nothing further to be adjudicated and triggered the time for appealing the August 2, 2002 judgment. See Casumpang v. ILWU, Local 142, 91 Hawai'i 425, 427, 984 P.2d 1251, 1253 (1999). Re-entry of the August 2, 2002 judgment on July 23, 2003 as a "Final

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Judgment" did not trigger a new period for appealing the August 2, 2002 judgment. Cf. Wong v. Wong, 79 Hawai'i 26, 897 P.2d 953 (1995). Entry of the July 23, 2003 "Final Judgment" as a judgment resolving all claims in Civil No. 1RC02-2920 was unnecessary to the appeal of the August 2, 2002 judgment inasmuch as the requirements of Jenkins v. Cades Schutte Fleming & Wright, 76 Hawai'i 115, 869 P.2d 1334 (1994) do not apply to district court civil cases. See Casumpang, supra. The August 22, 2003 notice of appeal was filed more than thirty days after the filing of the June 16, 2003 stipulation for dismissal and is an untimely appeal of the August 2, 2002 judgment. The failure of an appellant to file a timely notice of appeal in a civil matter is a jurisdictional defect that can neither be waived by the parties nor disregarded by the appellate court in the exercise of judicial discretion. Bacon v. Karlin, 68 Haw. 648, 650, 727 P.2d 1127, 1128 (1986). Thus, we lack jurisdiction over this appeal. Therefore,

IT IS HEREBY ORDERED that this appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, May 12, 2004.